

REFERENCE TITLE: sanitary districts; bonds

State of Arizona
House of Representatives
Forty-ninth Legislature
First Regular Session
2009

HB 2354

Introduced by
Representative Mason

AN ACT

AMENDING SECTIONS 48-2021, 48-2045, 48-2065 AND 48-2081, ARIZONA REVISED
STATUTES; RELATING TO SANITARY DISTRICTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 48-2021, Arizona Revised Statutes, is amended to
3 read:

4 48-2021. Issuance of bonds; subsequent bond issues

5 A. If a majority of the votes cast at a bond election favors the
6 bonded indebtedness proposed, bonds of the district for the amount stated
7 shall be issued and sold.

8 B. The board of directors ~~shall~~, subject to ~~the provisions of~~ this
9 article, **SHALL** prescribe by resolution the form of the bonds and interest
10 coupons attached thereto. The bonds shall be payable serially over a period
11 of not more than twenty years from the date thereof at a place fixed by the
12 board and designated in the bonds, together with the interest thereon from
13 the date of the bonds until paid, **EXCEPT THAT IF THE INITIAL PURCHASER OF THE**
14 **BONDS IS THE UNITED STATES OF AMERICA OR ANY DEPARTMENT, DIVISION OR AGENCY**
15 **OF THE UNITED STATES OF AMERICA, THE BONDS MAY MATURE OVER A PERIOD THAT DOES**
16 **NOT EXCEED FORTY YEARS AND THREE MONTHS.** Interest shall be payable
17 semiannually at the rate or rates set by the accepted bid, which shall not
18 exceed the maximum rate of interest set forth in the resolution calling the
19 election. The bonds may be refunded. The board of directors may provide for
20 their redemption before maturity on giving such notice as the board
21 determines to be reasonable and for the payment of a premium at redemption if
22 the board determines the premium to be reasonable or advisable.

23 C. The bonds may be issued in such denominations as the board of
24 directors determines, except that no bond shall be of a denomination less
25 than five hundred nor more than ten thousand dollars. Each bond shall be
26 signed by the chairman of the board of directors and countersigned by the
27 auditor of the sanitary district, and the seal of the district shall be
28 affixed thereto. The interest coupons of the bonds, if any, shall be
29 numbered consecutively and shall be signed by the chairman of the board of
30 directors and the auditor of the district by their engraved or lithographed
31 signatures. If any officer whose signature or countersignature appears on a
32 bond or interest coupon ceases to be such officer, either before or after
33 delivery of the bond to the purchaser, the signature or countersignature
34 shall be valid for all purposes as if the officer had remained in office.

35 D. The validity of the bonds, after their issuance, shall not be
36 questioned in any court, except on the ground that a provision of this
37 article authorizing their issuance is unconstitutional or that proper notice
38 of the bond election was not given.

39 E. When bonds have been issued by a sanitary district and the proceeds
40 of the sale thereof have been expended as authorized by this article, the
41 board of directors may, by resolution passed by a vote of not less than
42 two-thirds of its members, determine that additional bonds for carrying out
43 the purposes of the district should be issued. Thereupon the board of
44 directors shall cause another survey and report to be made. ~~Upon~~ **ON** approval
45 thereof as provided by this article for an original report, the board shall

1 submit to the qualified electors of the district, in the manner prescribed by
 2 section 48-2020, the question of issuing additional bonds. If a majority of
 3 the votes cast thereon is in favor of issuing the additional bonds, they may
 4 be issued and sold and the proceeds disposed of in the manner prescribed by
 5 subsections A, B, C and D of this section and by section 48-2022.

6 F. The district may issue refunding bonds to refund all or any portion
 7 of an issue of bonds issued pursuant to this section in the manner prescribed
 8 by title 35, chapter 3, article 4.

9 Sec. 2. Section 48-2045, Arizona Revised Statutes, is amended to read:

10 48-2045. Plans; limitation on assessment

11 Before passing the resolution of intention, ~~PRELIMINARY plans,~~
 12 ~~specifications and estimates of the cost~~ THAT SHOW THE LOCATION AND THE TYPE
 13 AND CHARACTER OF THE PROPOSED IMPROVEMENT and THE expenses of the improvement
 14 shall be prepared by the engineer and filed with the clerk. The assessment
 15 for any lot shall not exceed its proportion of the estimate.

16 Sec. 3. Section 48-2065, Arizona Revised Statutes, is amended to read:

17 48-2065. List of unpaid assessments; issuance of bonds;
 18 denominations; due date

19 A. After the prescribed time from the date of the warrant has expired
 20 and after the sanitary district has recorded the return, the board shall make
 21 and certify a complete list of all unpaid assessments ~~which~~ THAT amount to
 22 twenty-five dollars or more on any assessment.

23 B. If any person, before certification of the list, presents to the
 24 board an affidavit that he is the owner of a lot on the list, accompanied by
 25 the certificate of a searcher of record that the person is the owner of
 26 record, and notifies the board, in writing, that he desires no bond to be
 27 issued for the assessment on the lot, the assessment shall not be included in
 28 the list and shall remain collectible as provided in this article. The
 29 failure to file the notice bars any defense against the bonds, except for the
 30 defense that the board did not have authority to issue the bonds.

31 C. The clerk shall present the list to the district at its next
 32 meeting after the return has been recorded. At any time after awarding a
 33 contract for construction or acquisition, the district ~~may,~~ by resolution,
 34 MAY direct improvement bonds to be issued in an amount, which shall not
 35 exceed the amount of unpaid assessments exceeding twenty-five dollars as may
 36 be shown on the certified list. The resolution shall prescribe the maximum
 37 number and denomination of the bonds, and the times when payable, which shall
 38 be so fixed that an approximately equal amount of principal shall be paid
 39 each year or any approximately equal aggregate amount of principal and
 40 interest shall be paid each year until the whole amount is paid. The bonds
 41 shall mature in a period ~~which~~ THAT does not exceed twenty-five years and
 42 three months from the date of the bonds, EXCEPT THAT IF THE INITIAL PURCHASER
 43 OF THE BONDS IS THE UNITED STATES OF AMERICA OR ANY DEPARTMENT, DIVISION OR
 44 AGENCY OF THE UNITED STATES OF AMERICA, THE BONDS MAY MATURE OVER A PERIOD
 45 THAT DOES NOT EXCEED FORTY YEARS AND THREE MONTHS. The denominations of the

1 bonds shall be fixed by the district. The district may provide in the form
2 of the bond for redemption before maturity by giving such notice as the
3 district determines to be reasonable and by the payment of a premium at
4 redemption if the district determines a premium is advisable. The resolution
5 shall also fix the place, if any, other than the office of the treasurer, at
6 which the bonds and the interest are payable.

7 D. The bonds shall be issued as of the date determined by the district
8 and shall bear interest from such date at the rate not to exceed that
9 specified in the resolution of intention. They shall have semiannual
10 interest payments, the first of which is payable on January 1 or July 1, as
11 the case may be, occurring no earlier than ninety days after the later of the
12 date of the bond or the expected completion of the work, and shall be for the
13 interest accrued at that time.

14 E. The due date of all bonds is January 1 or July 1, as stated on the
15 face of the bonds, in the years in which they respectively become due.

16 F. The district may sell the bonds at public sale, or if the district
17 has a population of more than two thousand persons and has been in existence
18 for ten or more years at public or private sale, at a price at or above par
19 and accrued interest to the date of payment, and at an interest rate not
20 exceeding the maximum rate set in the resolution of intention. If the bonds
21 are not sold by the district they shall be delivered to the contractor for
22 the amount of the assessments remaining unpaid, and the bonds shall bear
23 interest at the maximum interest rate set forth in the resolution of
24 intention.

25 G. If the bonds are sold before the work or acquisition is completed,
26 the proceeds from the sale of the bonds shall be placed in a special fund to
27 be held by the treasurer and to be used to pay incidental expenses and
28 payments for construction or acquisition. Proceeds from the sale of the
29 bonds shall be used for the acquisition mentioned in the resolution of
30 intention or to make semimonthly or monthly payments to the contractor on a
31 basis of ninety per cent of the value of the work actually performed as
32 estimated by the district or engineer employed for such purposes to and
33 including the fifteenth or last day of each calendar month. The balance
34 shall be paid after the district has recorded a certificate of substantial
35 completion of the work described in the resolution of intention, in the same
36 manner as the recording of the assessment. The district shall record the
37 certificate after the work has been completed to its satisfaction. The
38 district shall also cause a copy of the notice of completion to be mailed to
39 each property owner in the same manner as the notice of hearing on the
40 assessment. Pending use of the bond proceeds, the treasurer may invest the
41 proceeds in any investments for which sinking funds of this state may be
42 invested or in the pooled investment fund established under section 35-326.
43 Notwithstanding the foregoing, if bond anticipation notes have been issued,
44 the bond proceeds, or so much as are necessary, shall be used to redeem the
45 notes.

1 H. Refunding bonds may be issued to refund all or any portion of an
2 issue of bonds issued and sold pursuant to this section in the manner
3 prescribed by title 35, chapter 3, article 4.

4 Sec. 4. Section 48-2081, Arizona Revised Statutes, is amended to read:
5 48-2081. Bond anticipation notes: form: procedures applicable

6 A. If the board determines and states in the resolution of intention
7 that improvement bonds shall be issued, bond anticipation notes may be sold
8 at any time after the award of a construction contract, **EXCEPT THAT BOND**
9 **ANTICIPATION NOTES TO PAY THE ESTIMATED ENGINEERING FEES MAY BE ISSUED AT ANY**
10 **TIME AFTER THE ADOPTION OF THE RESOLUTION ORDERING THE IMPROVEMENT.**

11 B. Bond anticipation notes shall be paid solely from the proceeds of
12 the sale of improvement bonds and monies collected from property owners who
13 want to pay all or part of their assessments in cash before the filing of the
14 certified list of unpaid assessments as provided in section 48-2065, **OR FOR**
15 **BOND ANTICIPATION NOTES ISSUED TO PAY ESTIMATED ENGINEERING FEES, FROM THE**
16 **PROCEEDS OF THE SALE OF IMPROVEMENT BONDS OR FROM A TAX LEVY IMPOSED BY THE**
17 **DISTRICT PURSUANT TO SECTION 48-2056, SUBSECTION B.** The notes may be in such
18 form and denomination as the board provides. The notes shall be executed by
19 the chairman of the board and attested by the secretary. The notes may bear
20 interest from their date at a rate not in excess of the maximum rate shown in
21 the resolution of intention. The term of the notes shall not be more than
22 six months beyond the date set for completion of the construction. The board
23 may repay such notes before maturity and without penalty or extend the life
24 of the notes if the term of the construction contract is extended or if any
25 default is made by the contractor. The notes shall be authorized by
26 resolution of the board.

27 C. The total amount of notes issued for any improvement shall not be
28 greater than the aggregate of ninety per cent of the contract price and the
29 total estimated amount of incidental expenses. The notes shall be sold at
30 not less than par at either public or private sale. If authorized by the
31 board, the chairman may enter into loan agreements with the purchaser of the
32 notes relative to:

33 1. The time and place of delivery.

34 2. The sale of improvement bonds to the purchaser of the notes if the
35 district is unable to procure a purchaser willing to purchase the bonds when
36 issued.

37 3. Making the demand on the owners of property for payment in cash.

38 4. Collection of cash payments from persons who want to pay their
39 assessments in cash and application of such cash payments to the repayment of
40 the notes.

41 5. Payment of an additional fee to the purchaser of the note to cover
42 the administrative expenses of the cash collections if the purchaser is the
43 person to whom cash collections are made.

1 D. To secure the payment of the notes the loan agreements may also
2 provide for a collateral assignment to the purchaser of the notes of all cash
3 collections, the warrant and the district's interest in the performance bond.

4 E. The proceeds from the sale of the notes shall be placed in a
5 special fund to be held by the treasurer and used for payment of incidental
6 expenses and payments to the construction contractor.

7 F. Proceeds from the sale of the notes shall be used to make
8 semimonthly or monthly payments to the contractor on a basis of ninety per
9 cent of the value of the work actually performed, as estimated by the
10 engineer employed for such purpose, up to and including the fifteenth or last
11 day of each calendar month. The balance shall be paid to the contractor
12 after the sale of the bonds solely from the proceeds from the bond sale, or
13 if bonds equal to the balance remaining cannot be sold, the balance shall be
14 paid by delivery of a similar principal amount of bonds to the contractor.

15 G. The issuance of bond anticipation notes constitutes an assignment
16 to the district of the monies due the contractor under the construction
17 contract. The district may agree with the contractor that the district will
18 make the demands for cash payments as provided in section 48-2058 or may
19 authorize the purchaser of the bond anticipation notes to make the cash
20 collections.

21 H. If bonds are issued to represent any assessments remaining unpaid
22 on the date the list is certified, the district shall sell the bonds and use
23 the proceeds to redeem the notes and pay the balance due to the contractor.

24 I. In addition to any incidental expenses included in the assessment,
25 if bond anticipation notes are issued, the notes may also include in the
26 incidental expenses all interest accruing on the bond anticipation notes, the
27 added costs of cash collections, if any, and all legal or financial fees
28 incurred in the issuance and sale of the bond anticipation notes.

29 J. If bond anticipation notes have been issued and the contractor has
30 been paid in accordance with subsection F of this section, the district shall
31 apply the proceeds collected from demands on the property owners to the
32 reduction of the outstanding portion of the bond anticipation notes and, if
33 the notes have been paid, to the contractor to reduce any balance due him.

34 Sec. 5. Emergency

35 This act is an emergency measure that is necessary to preserve the
36 public peace, health or safety and is operative immediately as provided by
37 law.